

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



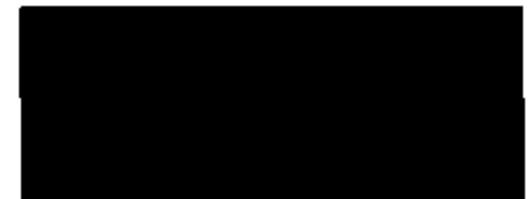
U.S. Citizenship
and Immigration
Services



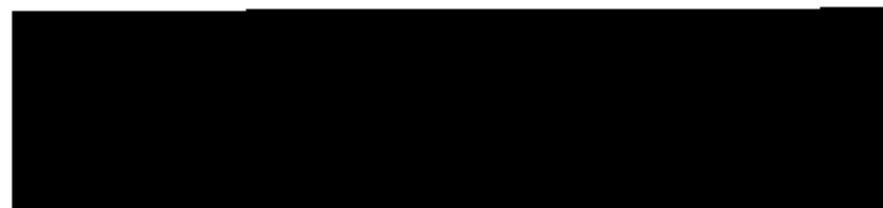
B5

DATE: DEC 19 2012 OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner filed an appeal, which was summarily dismissed by the Chief, Administrative Appeals Office (AAO). The petition is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

The petitioner, a wholesaler of health and beauty products, seeks to permanently employ the beneficiary as a database administrator and requests that he be classified as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOI).

The Director denied the petition on the ground that the beneficiary did not have the minimum educational requirement specified on the labor certification -- namely, a bachelor's degree in computer science or a foreign educational equivalent. The evidence of record showed that the beneficiary was awarded a Bachelor of Commercial Science degree, with a major in accounting, from ██████████ College in Manila, The Philippines, on June 6, 1984.

A timely appeal, Form I-290B, was filed on December 9, 2010, asserting that the beneficiary possesses the requisite education and experience for the job offered and the requested classification. However, no additional documentation was submitted in support of this claim. On July 6, 2012, therefore, the AAO summarily dismissed the appeal, in accordance with the regulation at 8 C.F.R. § 103.3(a)(1)(v).

On August 3, 2012, the petitioner filed another Form I-290B, identifying it as a motion to reopen and a motion to reconsider. The motion was accompanied by a letter from the petitioner's president and an evaluation of the beneficiary's academic qualifications and work experience that was already in the record and had already been considered by the Director in his denial decision.

The requirements for a motion to reopen are set forth in the regulation at 8 C.F.R. § 103.5(a)(2):

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The requirements for a motion to reconsider are set forth at 8 C.F.R. § 103.5(a)(3):

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

As further provided in 8 C.F.R. § 103.5(a)(4), "A motion that does not meet applicable requirements shall be dismissed."

The petitioner has presented no new facts or documentation, as required in a motion to reopen, to refute the Director's prior determination that the beneficiary does not have a bachelor's degree in computer science or a foreign educational equivalent. Furthermore, the petitioner has not presented any persuasive argument and/or pertinent precedent decisions showing that the Director's decision was based on an incorrect application of law or USCIS policy, as required in a motion to reconsider. Therefore, the petitioner's pending motion does not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2) or a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion(s), the movant has not met that burden. Therefore, the motion(s) will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen and motion to reconsider are dismissed. The Director's denial decision of November 9, 2010, and the AAO's summary dismissal of the appeal, are affirmed.